DOCUMENT RESUME

ED 333 589 EA 023 112

AUTHOR Cronin, Ingrid
TITLE Recent Challenges to State Systems of Financing Public Schools.
INSTITUTION Harvard Univ., Cambridge, Mass. Center for Law and Education.
PUB DATE Dec 90
NOTE 27p.
PUB TYPE Legal/Legislative/Regulatory Materials (090) -- Viewpoints (Opinion/Position Papers, Essays, etc.) (120)

EDRS PRICE MF01/PC02 Plus Postage.
DESCRIPTORS *Constitutional Law; Court Litigation; *Educational Equity (Finance); *Educational Finance; Educational Quality; Elementary Secondary Education; *Equal Education; Equal Protection; Finance Reform; *Public Schools; School District Autonomy; *State Courts

ABSTRACT

The question of whether inequities in the financing of public education violate state constitutional rights is examined in this document. Eight recent cases are discussed--four in which plaintiffs were unsuccessful in claiming that state school finance policies violated state constitutional guarantees for an education or equal protection, and four in which plaintiffs prevailed. Despite the lack of conformity in case outcomes and no consistent explanation for the pattern of court decisions, information about current debates is provided. Conclusions are that the theory of "municipal overburden" has had limited success; courts recognize the link between available money and educational quality; and the real issue appears to be the definition of local control. Variable decisions were handed down on the relationship between dollars spent and the quality of education, the role of the court, and the definition of and provisions for equal opportunity. A conclusion is that the current political climate of state-based reform and the role of state courts as a vehicle for law reform is conducive to challenges to unequal school systems. (27 references) (LMI)

Center for Law and Education
955 Massachusetts Avenue
Cambridge, MA 02139

RECENT CHALLENGES to STATE SYSTEMS of FINANCING PUBLIC SCHOOLS

by Ingrid Cronin

December, 1990

INTRODUCTION

Advocates for educational equality in a growing number of states have recently asked state courts to consider the issue adversely resolved by the Supreme Court on federal Constitutional grounds seventeen years ago[1] -- whether inequities in the financing of public education can resul: in violations of state constitutional rights.

This article discusses eight recent cases -- four in which plaintiffs were unsuccessful in claiming that state school finance schemes violated state constitutional guarantees to an education or to equal protection of the laws[2], and four in which plaintiffs prevailed on such claims. Examination of these cases, does not yield a consistent explanation of the pattern of decisions. State courts reviewed legislative statements and heard legal arguments (most notably about the intersection between equality of education and issues of local control) that were often quite similar, yet reached opposite conclusions. Despite the lack of uniformity in analysis and result, however, it is hoped, that a summary and analysis of these decisions will at least provide information about current developments in legal and policy debates over school finance, and some guidance for attorneys considering the litigation of similar claims.

---

[1] *See* San Antonio v. Rodriguez, 411 U.S. 1 (1973) (holding that education is not a "fundamental right" under the United States Constitution, and, applying the "rational basis" standard of equal protection review, refusing to invalidate a Texas school finance system that allowed for differences in per pupil expenditures based on the relative property tax wealth of local districts).

[2] Among the cases in which challenges to school finance schemes failed was Richland County v. Campbell, 364 S.E.2d 470 (S.C. 1988), a case in which the plaintiffs were apparently a more wealthy school district and some of its citizens. Richland County is discussed *infra* at 18.

A. CASES ADVERSE TO SCHOOL FINANCE PLAINTIFFS:

1. Britt v. North Carolina State Board of Education, 357 S.E.2d 432 (N.C. App. 1987) *dismissal allowed, review denied* 361 S.E.2d 71 (N.C. 1987)

In Britt, the North Carolina Court of Appeals upheld a lower court ruling to dismiss the plaintiff's complaint that the state system of public school finance violated the North Carolina constitution. Britt plaintiffs, children currently or expected to be enrolled in the low tax base Robeson County school district and their parents, asserted that two state constitutional provisions concerning education -- providing that "the people have a right to the privilege of education, and it is the duty of the State to guard and maintain that right,"[3] and imposing on the legislature the duty to "provide by taxation and otherwise for a general and uniform system of free public schools, ... wherein equal opportunities shall be provided for all students."[4] -- conferred upon them a "fundamental right to equal educational opportunity." Britt, 357 N.E. 2d at 434.

In alleging a denial of their state constitutional rights, plaintiffs attacked a state financing scheme that includes the award of a "flat" population-based grant of state monies to local districts, without regard to any other educational needs of the district. Districts were responsible for paying for all other expenses, including costs for building, maintaining and improving facilities, with local funds. The plaintiffs asserted that this scheme had resulted in severe educational inequities from one North Carolina district to another, and made it more difficult for counties such as Robeson to provide needed educational programs and facilities.

Citing prior state caselaw for the principle that the intent of the framers is crucial in any constitutional analysis, the Britt court relied heavily on its reading of the legislative history of the two constitutional provisions at issue. First, the court noted that the provision ensuring a "general and uniform system of free public schools," enacted in 1970, was primarily intended to eliminate "separate but equal" educational language of the 1866 state constitution, rendered unconstitutional in 1954 by the Supreme Court's decision in Brown v. Board of Education, 347 U.S. 483 (1954). The court relied in part on 1968 commentary to the (then-proposed) constitutional amendment, which assigns

---

[3] *See* North Carolina Constitution, Article 1, §15.

[4] *See id.*, Article 9, §2(1).

part of the responsibility for financing schools and education to local government. Id., at 434-35. Secondly, the court noted that state law had long made local districts responsible for the provision and maintenance of school buildings. As the 1968 commentary stated that the majority of the amendment constituted "editorial pruning, rearranging, rephrasing and modest amendments," reserving "more substantial changes ... for handling in separate amendments," the court held that there was no intent in 1970 to change the existing finance scheme. "[U]nder the financing system employed at the time of adoption of the 1970 Constitution," Britt opined, "those counties with lower tax bases faced the same disadvantages as do counties with lower tax bases under the present financing scheme. Yet the [1970] framers clearly indicated their intent to make the new Constitution reflect the system." Id., at 435.

The court further supported its position that the financing scheme is valid by noting state constitutional provisions at odds with the plaintiffs' interpretation. At Article 9, §2(2), for example, the constitution entitles local districts to "use local revenues to add to or supplement any public school or post secondary school program." Article 1, §7 requires that fines collected for penal law violations are to be used for the maintenance of public schools by the district that collects them. Based on these provisions, the Britt court concluded that the constitutional language concerning "equal educational opportunities" encompasses some variance in education from one district to another, and "preclude[s] the possibility that exactly equal educational opportunities can be offered throughout the State." Id., at 435-36.

Britt accepted the plaintiffs' argument that the North Carolina constitution confers a fundamental right to education; however, the court characterized that right as one of "equal *access*" to North Carolina schools. Id., at 436 (emphasis in original). Noting that the plaintiffs did not allege a denial of an education, but rather a denial of "the same educational opportunities as students in some other places of the State," the court held that such rights were outside the boundaries of state constitutional guarantees. "There is no requirement that [the state] provide identical opportunities to each and every student," Britt held. Id. (citation omitted). Although the plaintiffs had also argued that the state constitution might support a system that includes some disparities, as long as those disparities did not "deprive students of equal educational opportunity," Britt opined that the plaintiff's constitutional argument left no room for a middle ground. "[I]f our Constitution demands that each child receive equality of opportunity in the sense argued

by plaintiffs, only absolute equality between all systems across the State will satisfy the constitutional mandate." Id.

In short, Britt held, the 1970 constitutional amendments sought merely to "emphasiz[e] that the days of 'separate but equal' education in North Carolina were over, and that the people of this State were committed to providing all students with equal access to full participation in our public schools, regardless of race or other classification. Any other interpretation, we believe, would require drawing inferences and conclusions that not only cannot be supported, but are, in fact, contradicted by the history surrounding the adoption of the Constitution." Id.

The Britt opinion did not include any data concerning the amounts of money spent per pupil in various districts, or any factual information concerning educational programs and variations in the quality of instruction available from one district to another. The reader is left with no real sense as to the extent of departure from "absolute uniformity" in the various systems. An examination of court records would allow one to determine if the plaintiffs presented little evidence to suggest a wide gap in educational quality, or if the court chose to ignore offered facts.

2. Fair School Finance Council of Oklahoma v. Oklahoma, 746 P.2d 1135 (Okla. 1987)

The Oklahoma Supreme Court ruled in Fair School Finance that neither the United States nor the Oklahoma constitutions required a school funding system to guarantee an equal per-pupil expenditure for each child in the state.

The plaintiffs in this case, a nonprofit corporation that included local districts, students and local taxpayers, attacked Oklahoma's method of financing public schools as violative of state constitutional provisions regarding education, as well as federal Equal Protection guarantees. Fair School Finance plaintiffs relied on Oklahoma constitutional language ensuring that "provisions shall be made for the establishment and maintenance of a system of public schools..."[5] and a second provision instructing the legislature to "establish and maintain a system of free public schools wherein all the children of the State may be educated."[6]

---

[5] *See* Oklahoma Constitution, Article 1, §5.

[6] *See id.*, Article 13, §1.

The financing system at issue in this case included three sources of funding for Oklahoma schools (federal, state, and local), with the lion's share coming from state and local sources. Counties levy ad valorem taxes on real and personal property within the area and the monies are apportioned among the districts based on their average daily attendance for the past year. Various small local taxes may also be raised to meet fiscal emergencies. The authority of local districts to borrow money is also based on the value of taxable property in the district, thus giving poorer districts a smaller amount of money available and a lower ceiling for borrowing. An additional complication is the fact that the state aid program designed to "equalize" educational revenues among districts provides poorer districts with only about twice as much aid as the richest districts. Fair School Finance, 746 P.2d at 1140.

The plaintiffs' federal constitutional claim was based on an alleged violation of their right to equal protection under the Fourteenth Amendment. The court rejected this claim, however, relying on San Antonio v. Rodriguez,[7], and Plyler v. Doe, 457 U.S. 202 (1982)[8] to hold that it need apply only a minimal "rational basis" analysis in this case, in which plaintiffs did not allege either an absolute denial of education, or denial of an adequate education. The court examined the Oklahoma system to determine whether it had a legitimate state purpose and whether there was a rational connection between the purpose and the system.

Fair School Finance acknowledged that one purpose of the state school finance scheme is to "provide the best possible educational opportunities for every child," but added that other objectives were also enumerated in the statute. Id., at 1146. Specifically, the court noted that issues of local participation and control in school finance are "expressly mentioned" in the school finance statute. The court held that the Oklahoma system was rational, despite the fact that other schemes might provide poor districts with both more financial flexibility and local control. "The relative desirability of a system, as compared to alternative methods, is not constitutionally relevant as long as there is some rational basis to it." Id., at 1147.

The Fair School Finance court was similarly restrictive in its analysis of the plaintiffs' state constitutional claims, based on explicit provisions for education and an

---

[7] See note 1 *supra*.

[8] In Plyler, the Supreme Court reaffirmed that education was not a "fundamental right," but applied an intermediate level of Constitutional scrutiny to invalidate the complete exclusion of the children of non-resident aliens from Texas public schools.

equal protection right implied from the Oklahoma constitution's due process clause. The court analyzed these claims by asking three questions: (1) Does the mere mention of a subject in the constitution create a fundamental right? (2) If not, by its *terms* does the constitutional provision create a fundamental right? (3) Assuming that a fundamental right is created, what is the *exact nature* of the right or guarantee?

Fair School Finance refused to hold that the inclusion of an education clause in the state constitution made education a fundamental right, thus subjecting any state action to infringe upon this right to "strict scrutiny." The court attributed this argument to the plaintiffs, and characterized it as the converse of the Supreme Court's reasoning in Rodriguez, *supra* that education was not explicitly or implicitly guaranteed by the federal constitution. Id., at 1148. Finding this "Rodriguez syllogism" inappropriate in terms of a state constitutional inquiry, the court noted the "inherently different nature" of the federal constitution -- a document of restricted authority and delegated powers -- and its state counterpart, which addresses "not only those areas deemed fundamental but also others which could have been left to statutory enactment.... Thus, under the Oklahoma constitution, fundamental rights are not necessarily determined by whether they are provided for within the document." Id., at 1149.

Moving to its second inquiry -- whether the terms of the constitution create a fundamental right -- the court held that the Oklahoma constitution merely required the legislature to "establish and maintain" a public school system, not to require equal expenditures per pupil. Furthermore, even assuming *arguendo* a fundamental right, in accord with its third inquiry, the court limited this right to a "basic adequate education according to the standards that may be established by the state Board of Education." Id. Noting that other constitutional provisions specifically authorize the legislature to determine the manner (including the appropriate state agency) in which state funds to local districts are distributed, and that the constitution places "few restrictions" on the legislature's power regarding school systems, the court refused to apply "strict scrutiny" in this case. "[T]he only justiciable question is whether the Legislature acted within its powers," the court held. "Where the constitutionality of an act of the legislature is in question, all reasonable doubt will be resolved in favor of its validity and the act will be declared constitutional unless it can clearly be demonstrated that the legislature acted arbitrarily and capriciously. Such a demonstration has not been made here." Id., at 1150.

Two separate dissents were filed in Fair School Finance. The first objected to the fact that the majority had reached its decision solely on the pleadings, thus denying the

plaintiffs any opportunity to present evidence supporting their claim. Id., at 1151-53 (Simms, J., dissenting). The second dissent asserted that education is a fundamental right under the state constitution, and attacked the majority's assertion that the intent of the framers of the state constitution was to mandate only a "basic education," not "absolute equality." The author of this opinion asserted that while the constitution may not be read to require "absolutely equal funding, I read it clearly to say that it must be fair." Id., at 1153 (Wilson, J., dissenting). In contending that the Oklahoma scheme is unfair, this dissent asserted that "year after year there is legislatively perpetuated greater and continued disparity favoring those districts with more legislative clout." The dissent vividly characterized the Oklahoma statutory scheme as "the educational equivalent of sending one child to a thrift shop to buy his clothes while the neighboring child is sent to the tailor to have his clothes handmade. I suppose we can say that both were clothed." Id.

3. Kukor v. Grover, 436 N.W.2d 568 (Wisc. 1989)

Kukor v. Grover held that the Wisconsin school finance system did not violate state constitutional provisions requiring that district schools "shall be as nearly uniform as practicable...."[9] and guaranteeing equal protection of the laws.[10] The Wisconsin system includes a combination of state, local, and federal funds. The state contribution at issue in Kukor, "equalization aid," guarantees a certain level of educational funding by establishing a set property tax base for education and providing state aid to assist those communities whose tax base falls below the state-established level. This system also limited the amount of "equalization aid" going to those districts whose tax base is proportionately higher and provided no "equalization aid" to districts whose tax base exceeds the level of the state-established guarantee.

Kukor raises the same constitutional questions posed in many school finance cases. It is distinguished, however, by its specific focus on the need to finance programs that are aimed specifically at remedying the ravages of poverty. Kukor plaintiffs, including a school district and various individuals, asserted that the school finance scheme adversely affected school districts which enroll children who are in need of more extensive and expensive programs, thus subjecting these districts to "educational

---

[9] *See* Wisconsin Constitution, Article X, §3.

[10] *See id.*, Article 1, §1.

overburden." Similarly, plaintiffs contended that the system was not helpful to communities which, plagued by low property valuation, high tax rates, extensive needs for social services and a high proportion of low-income residents, suffer from "municipal overburden" -- the need to compensate for high municipal and social service needs, higher labor costs, security and vandalism costs and high energy and maintenance costs in school buildings. Kukor, 436 N.W.2d at 573.

Plaintiffs asserted that the Wisconsin system is unconstitutional because it fails to recognize that the educational needs of each district may be vastly different; poverty and its attendant problems often mean that much more money is needed in poor districts to establish an education system with a reasonable level of educational opportunity for its children. Thus, school districts with limited resources and more severe problems spend less per pupil. In order to comply with the constitution, the plaintiffs asserted that Wisconsin's school finance system should be sensitive to educational need, and give poor districts the resources to spend approximately the same amount of money, per pupil, as wealthy districts. Id.

In considering the plaintiffs' "uniformity" argument, the court asked a question of first impression in Wisconsin: whether the state constitution requires the allocation of resources in such a manner as to guarantee that each school district can "assure equality of opportunity for education in the sense of responding to the particularized educational needs of each child." Id., at 575.

As the intent of the constitution's framers was not evident from the language of the "uniformity" provision, Kukor turned next to legislative history and to prior caselaw concerning this provision. The court found that there had never been any evidence of the framers' intent to have the state fund the whole school system. The court quoted language from the journals and debates of the constitutional convention, which stated explicitly that the framers "'proposed to give the people a direct pecuniary interest in the support of their schools by calling upon them to contribute at least one third of the amount required for their sustenance, by direct taxation,'" and providing that if the amount of money provided by the state school fund was insufficient, "'towns would have the power to raise more.'" Id., at 576 (quoting Journals and Debate, Constitutional Convention, at 238, 335 [1847-48]). Kukor found that legislative history also indicated that the framers believed the state education fund would be more than adequate to support the needs of the public schools, and relied on this history to conclude that a financing system that included local contribution was clearly considered equitable when the constitution was written. As the state currently contributes more to local districts

than was originally intended, Kukor held, this "more responsive" system cannot be unconstitutional. Id., at 577.

Kukor also considered prior caselaw, which had established that the constitutional requirement of uniformity among school districts refers to the "character" of district schools. The court held, however, that the definition of the constitutionally-guaranteed "character" of instruction is restricted to those criteria included in the state statute regarding "school district standards" -- teacher certification, length of the school year, standard school curriculum, and many others. Id., at 575, 577-78. "The appellants have not asserted that due to the distribution of school aid under the equalization formula, their districts are unable to meet these standards," the court found. "Consequently, we hold that the school finance system ... does not unconstitutionally impinge upon the uniformity requirements" of the constitution. Id., at 578.

The plaintiffs' equal protection claim, which mirrored its uniformity argument, asserted that the school finance system "fails to treat similarly situated students equally to the extent that the quality of education a student receives depends upon his or her place of residence." Id., at 579. Additionally, plaintiffs claimed that the right to "an equal opportunity for education" is a fundamental right under the state constitution, and that any threatened deprivation of that right must be subject to strict scrutiny. Id.

Kukor agreed with the plaintiffs that the right to equal opportunity for education is fundamental in Wisconsin. The court also found, however, that this right is limited by the "uniformity" provisions of the constitution, discussed *supra*. The court refused to hold that equal per pupil expenditures were constitutionally required, and noted that none of the inequities alleged by the plaintiffs were included among the statutory "standards" that prior caselaw held must be uniform. Furthermore, the court opined that such precise equalization in this system "is constitutionally prohibited to the extent that it would necessarily inhibit local control." Id., at 579.

Despite characterizing the right to an equal opportunity to education as fundamental, the Kukor court refused to apply anything but a deferential "rational basis" analysis to the case before it. The court cited the holdings of San Antonio v. Rodriguez, *supra*, Plyler v. Doe, *supra*, and Papasan v. Allain, 487 U.S. 265 (1986), for the proposition that strict scrutiny is appropriate only in cases of absolute deprivation of education. As the "rights at issue in [this] case ... are premised on spending disparities and not upon a complete denial of educational opportunity within the scope of art. X [of

the Wisconsin constitution]," Kukor found that a rational basis analysis was appropriate. Id., at 580.

In finding that there is a rational basis for the Wisconsin finance system, Kukor noted that any differences in per pupil expenditure resulted not from state funding, but from "decisions made at the local level." The court relied on constitutional legislative history and prior caselaw to hold that the local control inherent in Wisconsin's school finance scheme "is not merely a theoretical notion, but rather is a constitutionally based and protected precept as to which the framers of our constitution were firmly committed." Id., at 581.

Kukor also upheld the constitutionality of the funding system by noting a history of extreme judicial deference to the legislature in matters dealing with education finance. "While our deference would abruptly cease should the legislature determine that it was 'impracticable' to provide each students a right to attend a public school at which a basic education could be obtained, or if funds were discriminatorily disbursed and there existed no rational basis for such finance system, we will otherwise defer to the legislature's determination of the degree to which fiscal policy can be applied to achieve uniformity." Id., at 582.

Throughout the opinion, Kukor appeared to accept the plaintiffs' assertion that tremendous differences existed between districts in Wisconsin. The court held, however, that a lesser degree of disparity, while desirable, was not constitutionally mandated. The majority opinion concluded by noting state legislative efforts to provide additional funds for economically and educationally disadvantaged students, and by advising those districts who continue to suffer from municipal overburden to address themselves to the legislature and to local communities.

Three Wisconsin Supreme Court justices dissented from the holding of Kukor. The dissent asserted that the nature of the case was whether all Wisconsin children have "an equal opportunity for education," and asserted that the state had failed to ensure that this equality existed. Id., at 587 (Bablitch, J., dissenting). The dissent interpreted the "uniformity" language of the state constitution as guaranteeing every Wisconsin child "a uniform opportunity to become an educated person." Id., at 588. The dissent noted the various inadequacies in educational services provided to students in poor Wisconsin school districts, including those children who may "come to school unready to learn." The dissent characterized the Kukor majority as assuming that all children begin their education from "the same starting point...." While that assumption may have been accurate in the past, the dissent claimed, "[i]t is not even close to reality today." Using

football as an analogy, the dissent stated that most Wisconsin children are "handed the educational ball at the twenty yard line," but those in poor districts start "on the one yard line with a 300 pound lineman on their back...." Although each group of children have the opportunity to "score an educational touchdown, ... the opportunity is far from equal." Id.

The Kukor dissent characterized "local control" as a luxury only rich school districts can afford. "The concept of local control over education is at best illusory and at worst a cruel hoax for those low tax base communities which lack the local revenues necessary to provide even basic educational opportunities in their schools. Just as the rich and the poor are equally free to sleep on a park bench in the dead of winter, so to the rich and poor school districts under the guise of local control are free to decide how much concern they really have toward education. Unfortunately for the district with municipal overburden and /or a small tax base, concern for educational opportunities must end when its tax rolls can absorb no more." Id., at 593.

4. Richland County v. Campbell, 364 S.E.2d 470 (S.C.1988)

Upholding a lower court dismissal of the plaintiffs' claims, Richland County v. Campbell ruled that South Carolina's shared funding plan was a rational and constitutional means to equalize educational standards and opportunities in the state's public schools. The plaintiffs in this case, a school district (apparently wealthy) and some of its residents, alleged that the system of financing public primary and secondary education was violative of the education clause of the state constitution, which provided that the legislature "shall ... provide for the maintenance and support of a system of free public schools...."[11] The plaintiffs argued that the existing scheme, in which education is financed both through local tax dollars and state aid that takes the wealth of local districts into account, results in "disparate revenue and unequal educational opportunities...." Richland County, 364 S.E.2d at 471.

Richland County relied in part on prior caselaw, holding that the South Carolina Constitution gave the legislature tremendous latitude in structuring its response to local educational needs. The legislature "is required to 'provide for a liberal system of free public schools' but the details are left to its discretion," the court held. Id., at 472

[11] *See* South Carolina Constitution, Article 11, §3.

(citations omitted). In addition, the court cited the "cardinal principle" of presuming all legislative acts to be "constitutionally valid, [with] every intendment ... indulged in favor of the act's validity by the courts." Id. Using this extremely deferential standard, the South Carolina financing scheme was upheld.

It should be noted that although the plaintiffs in this case appeared to assert that the mere existence of a state aid system based on school district wealth violated constitutional principles, this system in fact benefitted poorer school districts, which in South Carolina receive proportionately more state funds and use proportionately less local revenue than wealthier districts. The decisions cited by plaintiff as supporting authority, in which wealth-based school finance systems had been invalidated as violative of state constitutions, all concerned cases in which wealthier, not poorer, districts had benefitted[12]. Thus, these cases were easily distinguished from the instant case by the Richland County court. Id., at 472.

B. CASES IN WHICH SCHOOL FINANCE PLAINTIFFS PREVAILED

1. Edgewood Independent School District v. Kirby, 777 S.W.2d 391 (Texas 1989)

The Texas Supreme Court unanimously held in Edgewood that the Texas school finance system violates the state constitutional rights to equal protection[13], due process of law,[14] and the state constitutional mandate to the legislature to establish an "efficient system of public free schools."[15]

The plaintiff school districts in Edgewood challenged a system in which the state provided 42% of the educational costs, the local districts 50% and other sources 8%. As the 50% contributed by local districts came from money raised through property taxes, property-rich districts had vastly greater resources with which to establish school programs. Thus, this system forces property-poor districts to tax at higher rates than

---

[12] *See* Robinson v. Cahill, 287 A.2d 187 (1972), Serrano v. Priest, 96 Cal. Rptr. 601, 487 P.2d 1241 (1971).

[13] *See* Texas constitution, Article I, §3.

[14] Id., Article 1, §19.

[15] Id., Article 7, §1.

property-rich districts just to raise sufficient funds to enable schools to meet minimum state accreditation standards.

The record contained numerous statistics and examples of disparities between poor and wealthy districts, including: wealthy districts having $14,000,000 of taxable property per pupil, while the poorest districts have only $20,000 of taxable property per student, with a resultant 700 to 1 ratio; some poor districts had no foreign languages, pre-kindergarten, or college preparatory course, and could offer only a few science classes and minimal extra-curricular opportunities, while wealthier districts offered all these "basics" plus drop-out prevention, counseling services, well equipped labs, and vastly more experienced staff. Edgewood held that these facts supported the assertion that "the amount of money spent on a student's education has a real and meaningful impact on the educational opportunity offered that student." Edgewood, 777 S.W.2d at 393.

The Edgewood court devoted substantial effort to determine what the constitution's framers meant in requiring an "efficient" education. The court rejected the defendants' assertion that the framers used "efficient" to mean a cheap or economical school system. Rather, the court noted the plain meaning of "efficient" as effective or productive of results with little waste. In addition, citing constitutional legislative history that indicated the framers' statements about the "importance of education for *all* people in the state, rich and poor alike," the court concluded that the framers would never have envisioned the disparities which exist in the system it reviewed as "efficient." *Id.*, at 395 (emphasis in original). The opinion noted that in 1876, when the Texas constitution was written, the finance structure ensured that the burden of financing public education fell uniformly across the state and that each student received exactly the same number of dollars. While the ruling in Edgewood does not insist that the per capita system of funding exist today, it makes it clear that present day realities have strayed too far from the intent of the framers. "Although local conditions vary, the constitutionally imposed state responsibility for an efficient education system is the same for all citizens regardless of where they live." Id., at 396.

Edgewood also relied on legislative history presented by the plaintiffs to find that the state legislature had expressed (if not fully funded) the concept of equality in education as an indicator of efficiency. These legislative actions included the enactment of a 1929 law designed to "equaliz[e] the educational opportunities afforded by the State ...," and the 1948 creation of a special committee to examine school finance because the

legislatures acknowledged that the founders of Texas were desirous of providing equal educational opportunities for all. Id., at 397.

In order for a system to be financially efficient, Edgewood said, "there must be a direct and close correlation between a district's tax effort and the educational resources available to it; in other words, districts must have substantially equal access to similar revenues per pupil at similar levels of tax effort. Children who live in poor districts and children who live in rich districts must be afforded a substantially equal opportunity to have access to educational funds." Id. Finding that such opportunities did not exist in Texas, the court invalidated this school finance system as unconstitutional. Id.

The Edgewood court was faced (as in Kukor and Fair School Finance, discussed *supra* and Helena Elementary School District No. 1 v. State, discussed *infra*), with the assertion that school finance reform would eliminate local control. The court rejected this argument, however. Edgewood held that an "efficient" system "requires only that the funds available for education be distributed equally and evenly. An efficient system will actually allow for more local control, not less," by providing poorer districts with more "economic alternatives.... Only if alternatives are indeed available can a community exercise the control of making choices." Id., at 398. In addition, the court indicated that local districts could still supplement an "efficient system designed by the legislature; however, any local enrichment must derive solely from local tax effort." Id.

Although the Edgewood court directed the Texas legislature to dramatically improve the financial prospects of the poorest schools, it refused to specify the content of any legislation enacted to comply with the opinion. The court gave the Texas Legislature until May 1, 1990 to adopt a new finance system. This deadline was later extended until June 1, 1990.

On September 24, 1990, the trial court held that the legislative response to the Edgewood decision continues the vice of the prior system; i.e., "...it continues to deny school 'districts...substantially equal access to similar revenues per pupil at similar levels of tax effort.'" See Edgewood Independent School District v. Kirby, No. 362, 516, Dist. Ct., Travis Cty., Texas, 250th Dist., Judgement and Opinion, Sept. 24, 1990, Judg., at 2. The court allowed the legislature until September 1, 1991 to adopt a lawful system, failing which the court will "consider enjoining the expenditure of all state and local funds or ordering defendants to disburse available funds in the most efficient manner until such time as the Legislature does establish an efficient system." Id.

The new system, the district court held, would continue to be one where the state guaranteed equality to a point, but "not to the level of the real difference in educational opportunity" between "rich districts" and "poor districts." Id., at 16. Moreover, with regard to facilities, where differences are also "vast," the legislation provided "merely a study," not a "plan"; and it is a plan for "adequate," not "equitable" facilities. Id., at 22-24. The court reiterated that "[a] dollar for dollar match is not required. Substantially equal opportunity is." Id., at 31.

2. Helena Elementary School District No. 1 v. State, 769 P.2d 684 (Mont. 1989)

The Helena decision held that Montana's system of funding public schools violated the state constitution's education clause, providing: "It is the goal of the people to establish a system of education which will develop the full educational potential of each person. Equality of educational opportunity is guaranteed to each person of the state."[16]

The plaintiff school districts challenged a system that funded public schools through a combination of state and local revenues. The General Fund provides 70% of school financing and includes various components. Under the Montana School Foundation Program, the legislature meets every two years to set the Maximum General Fund Budget Without a Vote (MGFBWV) for the public elementary and secondary schools of the state. Eighty percent (80%) of this budget is funded from property taxes on all property in each county, and several forms of state aid. The last 20% of MGFBWV funding is raised through permissive levies, made without a vote. State equalization revenues supplement districts unable to reach the basic level through the above taxes. Most school districts operated with budgets in excess of the MGBWV figure and relied upon monies obtained from property taxes, levied after a vote. Other sources of income were vehicle taxes, interest income, and tuition income. The evidence presented to the court demonstrated a marked change over time: in 1950 less than 20% of the revenue necessary for running a school district was raised through local levies and other sources; in 1985-86, the figure was 35%.

Helena relied both on an analysis of the plain language of the education clause and on evidence of educational inequities resulting from differences in per pupil

---

[16] Montana constitution, Article 10, §1.

expenditures from one school district to another. The court focused on the fact that the constitutional language used the word "guarantee" in discussing the rights of Montana schoolchildren. Although the state defendants had attempted to characterize this language as merely "an aspirational goal," the court noted that the framers had used the term "goal" in other places, but chose not to use "goal" in describing educational opportunity. "We conclude that the plain meaning ... is that each person is *guaranteed* equality of educational opportunity," Helena held. Id., at 689 (emphasis in original). The court also rejected the defendants' claim that another constitutional provision, concerning specifically the role of the legislature in funding and distributing state educational aid "in an equitable manner," was intended by the framers as a limit on the legislature's obligation to provide equal educational opportunity. Id., at 689-90.

The Helena court was clearly influenced by evidence presented by the plaintiffs, which established wealth differences as large as 8-to-1 among similarly-sized school districts and great disparities in per pupil expenditures. Witnesses testified that wealthier districts have many more options and opportunities than those with fewer resources, including more science classes in better equipped labs, enriched language arts curriculum, more programs for gifted and talented students, a wider range of extracurricular activities, better computer equipment and superior library facilities. Id., at 687-88. The court also opined that even the wealthier districts were "not funding frills or unnecessary expenditures." Id., at 690.

Helena defendants put forth two other arguments: (1) That the quality of education should be measured by the success of students from various districts rather than by the number of dollars put in (the "output" theory); and (2) that the recent fiscal difficulties of the state account for the differences in per pupil spending. The court rejected each of these arguments, agreeing with the lower court that the state had failed to "submit convincing evidence" concerning the "output theory," and that the state's fiscal problems "in no way justify perpetuating inequities." Id.

In addition, although the Montana constitution (like the Wisconsin constitution analyzed in Kukor, *supra*) included direct references to "local control," the Helena court rejected the argument that this language was a sufficient basis to uphold the existing school finance system. The court first noted that the Montana provision -- establishing that the "supervision and control" of local schools shall be vested in locally-elected boards

of trustees[17] -- addressed only the control of schools, and contained "no specific reference to the concept of spending disparities." Id. Secondly, as in the Kukor dissent and the decision in Edgewood, *supra* (but as distinguished from the narrow reading of "local control" in the Kukor majority), the court found that the lack of options available to poorer districts denies them any real local control. Id.

Although the Helena court specifically affirmed a lower court ruling that "spending disparities had translated into a denial of equal educational opportunities," id., the court did note that establishing quality education and equal educational opportunities requires more than money. The opini was careful to state that all elements of a quality education are important; the ruling discusses only the element in this case. Id., at 691. It leaves alive the possibility that other elements of an equal education may be litigated later and perhaps encourages the legislature to address the issue before it comes to court.

3. Rose v. Council for Better Education, Inc., 790 S.W.2d 186 (Kentucky 1989)

The Kentucky Supreme Court decision in Rose v. Council for Better Education is significant not just as an opinion regarding school finance, but as an extremely broad ruling, finding that the Kentucky General Assembly had failed completely to comply with its constitutional mandate to "provide an efficient system of common schools throughout the state."[18] The court held:

> Lest there be any doubt, the result of our decision is that Kentucky's *entire system* of common schools is unconstitutional. There is no allegation that only part of the common schools is invalid, and we find no such circumstance. This decision applies to the entire sweep of the system-all its parts and parcels. This decision applies to the statutes creating, implementing and financing the *system* and to all regulations, etc., pertaining thereto. This decision covers the creation of local school districts, school boards, and the Kentucky Department of Education to the Minimum Foundation Program and Power Equalization Program. It covers school construction and maintenance, teacher certification - the whole gamut of the common school system in Kentucky. Rose, at 215.

A key part of the Rose opinion concerned the unconstitutionality of the state's school finance system, in which schools are financed primarily through funds received from

---

[17] Id., Article 10, §8.

[18] *See* Ky Const. sec 183.

the state. Although various state aid or "equalization" provisions had been enacted by the Kentucky legislature since 1930, the court found that many of these programs, based in efforts to assess real property at its fair cash value and to generate other tax revenue for education, were followed by schemes to lower tax rates. In fact, Rose held, one of two major equalization schemes -- the Power Equalization Fund (PEP) -- equalized only a "fraction" of local taxes. Id., at 196. In sum, the court found, "every forward step taken to provide funds to local districts and to equalize money spent for the poor districts has been countered by one backward step." Id.

The evidence in Rose incontrovertibly established the inadequacy of Kentucky's education financing effort. The opinion contained numerous examples establishing that Kentucky's educational system is dismal according to both national and regional standards. Eighty percent of the students in Kentucky schools are not as well educated as the remaining 20%. Disparities exist with regard to teacher pay, student-teacher ratio, quality of curriculum, quality of plant and school management. In addition, 35% of the adult population are high school drop-outs, only 68.2% of ninth graders eventually graduate from high school, and 30% of the local school districts are "functionally bankrupt." Id., at 197. In fact, the court characterized the state defendants' evidence as "a virtual concession that Kentucky's system of common schools is underfunded and inadequate; is fraught with inequalities and inequities throughout the 168 local school districts; is ranked nationally in the lower 20-25% in virtually every category that is used to evaluate education performance; and is not uniform among the districts in educational opportunities." Id.

The opinion devotes considerable energy to defining what level of education would meet the constitutional standard of "efficient." The view expressed by the expert for the defendants, that an efficient system was one which did the best with the money available to it was quickly rejected by the court. Rather, Rose held

> that an efficient system of education must have as its goal to provide each and every child with at least the seven following capacities: (i) sufficient oral and written communication skills to enable students to function in a complex and rapidly changing civilization; (ii) sufficient knowledge of economic, social, and political systems to enable the student to make informed choices; (iii) sufficient understanding of governmental processes to enable the student to understand the issues that affect his or her community state, and nation; (iv) sufficient self-knowledge and knowledge of his or her mental and physical wellness; (v) sufficient grounding in the arts to enable each student to appreciate his or her cultural and historical heritage; (vi) sufficient training or preparation for advanced training in either academics or vocational fields so as to enable

> each child to choose and pursue life work intelligently; and (vii) sufficient levels of academic or vocational skills to enable public school students to compete favorably with their counterparts in surrounding states, in academics or in the job market.

Id., at 212, footnote omitted.

In holding that "education is a basic, fundamental constitutional right that is available to all children within this commonwealth," the court made it clear that the General Assembly has a nondelegable obligation to provide for this system. The schools must be adequately funded, and substantially uniform. There is no statement requiring absolute spending uniformity; the emphasis is on equality. "The children of the poor and the children of the rich...must be given the same opportunity and access to an adequate education." Id., at 211.

Several of the unsuccessful arguments made by the defendants are worth noting. First, Rose defendants noted the state's history of school finance and local tax revenue statutes, and put forth "uncontroverted evidence" that state funding for public education had substantially increased. The court was unmoved by these assertions, however, noting that all expert witnesses in the case had stated that inequities continue to exist despite, "and indeed have been exacerbated by" legislative efforts. Id., at 198. Rose also rejected the defendant's suggestion that the plaintiff local boards of education had no legal authority or standing to sue the state. The court clearly sees the local boards as following their constitutional mandate in suing, and cited statutes specifically empowering such action. Id., at 199-200.[19]

The Kentucky General Assembly has taken on the enormous task of restructuring the state's primary and secondary schools. On March 30, 1990, the legislators approved a system radically different from the previous one. Their plan attempts to meet the two directives of the court: to reorganize school financing so as to close the gap between rich and poor districts and to raise the quality of education available. The features of the new system include state performance objectives for academic and other areas, for example, attendance; development of assessment techniques; school site-based management, with governing councils including parent representatives; and cash bonuses for staff in successful schools. The state will be ready to help troubled schools but will also close those which fail to pass muster after two years of assistance. The finance provisions will

---

[19] *See* KRS 160.160, providing that "[e]ach board of education shall be a body politic and corporate with perpetual succession. It may sue and be sued; and do all things necessary to accomplish the purposes for which it is created...."

narrow but not eliminate gaps (because property-rich districts will continue to be able to exceed the state-guaranteed level of expenditures).[20]

4. Abbott v. Burke, 575 A.2d 359 (N.J. 1990)

The New Jersey Supreme Court unanimously held in Abbott that -- as applied to approximately 28 "poorer urban school districts" -- certain education laws, including the state's school finance system, violate the requirement of Article VIII, §4, para. 1 of the New Jersey Constitution that the "Legislature shall provide for the maintenance and support of a thorough and efficient system of free public schools...." Id. at 363, 408.[21] These districts must not only receive funding "substantially equal to that of property-rich district," but also "adequate to provide for [their] special educational needs...and [to] address their extreme disadvantages." Id. at 363, 408. However, the Court also held that "[f]or most districts, plaintiffs [had] failed to prove substantively that a thorough and efficient education does not exist." Id. at 384; see also at 392-93. It, therefore, "[left] unaffected the disparity in substantive education and funding found in other districts..., although that disparity too may some day become a matter of constitutional dimension." Id., at 363.

The court's ruling was based upon a several-step analysis, which began with the central concern, i.e., the substantive content of the concept of "a thorough and efficient system of free public schools...." Such a system provides an education

> needed in the contemporary setting to equip a child for his [or her] role as a citizen and as a competitor in the labor market.... Id., at 371-72, 397.

It provides

> poorer disadvantaged students...a chance to be able to compete with relatively advantaged students. Id., at 372, 400.

---

[20] See New York Times, 3/30/90, pp. A-1, A-12; Education Week, 4/4/90, pp. 1, 34.

[21] The court selected from a listing of 56 "urban districts" (developed by state officials) those "with the lowest socioeconomic status" (as determined by the N.J. Department of Education). Id., at 384-87 & n.18. The evidence was held to establish a lack of "thorough and efficient" education in these districts. The court excluded Atlantic City due to "its high property wealth" (id., at n.18), and indicated that the list was subject to refinement during the development of a remedy. Id., at 408. These districts educate about 25% of all pupils (id., at 389), and 71% of minority students. Id., at 387, n.19.

First. The court found in "the poorer urban districts...a constitutional failure of education no matter what test is applied to determine [what is] thorough and efficient." Id., at 395. It noted that "[m]any opportunities offered to students in richer suburban districts are denied [students in the poorer urban system]." Id. It discussed access to computers; science education; foreign-language programs; music and art programs; and industrial-arts and physical education programs. Id., at 395-96. It referred to "crumbling" facilities, id., at 397,[22] and disparities in pupil-teacher ratios, as well as in average experience of instructional staff and the level of their preparation. Id., at 399.

Second. "[The] record shows that the educational needs of students in poorer urban districts vastly exceed those of others, especially those from richer districts." Id., at 400. Here, the court referred not only to student failure on a "minimal [state] test" and dropout rates, id., at 400-01, but also to needs in terms of "food, clothing and shelter...close family and community ties and support, and... [for] helpful role models." Id., at 400. Given these needs, "achieve[ment] [of] the constitutional standard" requires that "the totality of the districts' educational offerings must contain elements over and above those found in the affluent suburban district." Id., at 402.[23]

Third. Yet, "the poorer the district and the greater its need, the less the money available...." Id., at 387. The court illustrated:

> ...in 1984-85, a group of richer districts with 189,484 students spend 40% more per pupil than a group of poorer districts with 355,612 students; one provides an education worth $4,029 per pupil, the other, $2,861. For instance, a 3,000 pupil district in a poorer area has a budget of $8.6 million, while a relatively wealthy suburban district with 3,000 pupils has a budget of $12.1 million.... Id., at 383.

The court refused to accept a state argument that all New Jersey districts were funded above "the minimum amount...needed to operate an effective school system...." Id., at 403. Absent evidence "that the State was clearly right," it "adhere[d] to the conventional wisdom," and followed the actions of officials, which evince the view "that what money buys affects the quality of education." Id., at 404-05. Accordingly, the court refused to "strip all notions of equal and adequate funding from the constitutional obligation...." Id., at 404.

---

[22] The court found the present "record insufficient to fashion a remedy concerning capital construction." Id., at 411.

[23] The court discussed in general terms needed programs ("adequate libraries and media centers"; counselling; "alternative education programs"; "intensive pre-school and all-day kindergarten enrichment program[s]"; recruitment of parents). Id.

Fourth. The court concluded that existing standards and their implementation would not work to provide "a thorough and efficient education." Although "[t]here is no limit - theoretically - on a district's ability to tax and spend," the overall need for funds for a wide variety of services in poorer urban districts ("municipal overburden") "effectively prevents [them] from raising substantially more money for education." Id., at 378, 394. The state's existing "plans, goals, and standards" do not "measure the district's system against the accepted definition of a thorough and efficient education...." Id., at 374. The "effective schools" approach will not, alone, satisfy the constitutional mandate. Id., at 405.

The court defined a broad role for the legislature and executive branches in devising a remedy. Id., at 408-10. They may, for example, adjust the number of systems, qualifying as "poorer urban districts." Id., at 408. However, "a new funding mechanism" -- one not "depend[ent] on how much a poorer urban school district is willing to tax" -- must be at least partially implemented by the 1991-92 school year. Id., at 409-10.[24] The court "assumed [that] the design of any new funding plan will consider the problem of municipal overburden in these poorer urban districts." Id., at 409.

In Abbott, the court emphasized "a specific substantive level of education," not "expenditures per pupil, equal or otherwise...," id., at 368, as such. It concluded from a combination of factors that students in some districts did not receive the requisite level of education -- and would not under the current system. The court concluded that providing the 28 districts funding equivalent to the state's best funded system's (and more) "will help...." Id., at 403. It, therefore, required the reform of the system of school finance, while noting that its authority and a legislative remedy could extend to other areas. Id., at 409-10 ("organization and management," "mismanagement").

---

[24] Officials must also address by 1991-92 the "minimum aid formula" held to be unconstitutional because it is distributed only to "relatively richer districts" and "thereby [increases] the disparity of educational funding between richer and poorer." Id., at 406-07.

CONCLUSION

It is ironic that the Texas Supreme Court's decision in Edgewood v. Kirby, *supra*, seems to have brought school finance jurisprudence in that state full circle from the U.S. Supreme Court's ruling in San Antonio v. Rodriguez. Outside of Texas and in addition to the decisions described in this memorandum, numerous school finance suits are now in progress[25] with others under consideration[26].

While the education clauses of the state constitutions are worded in several different patterns, winning school finance litigation seems to turn on additional factors other than the exact phrasing of the disputed constitutional section.

Research on the intent of the framers in choosing the wording and the ability to demonstrate that the present day situation is not one envisioned when the legislation was passed have been valuable if accompanied by statistics, and identification of particular school districts which are not treated as the constitution demands. The more graphic the inequity, the more persuasive the evidence.

While "municipal overburden" as a theory[27] has had limited success in the courts, it was a significant factor in New Jersey. If the same point can be made by demonstrating there is little correlation in a state between the property tax rate and the dollars available for education, it will be much harder for a state to establish that the financing scheme is a rational way to meet a constitutional mandate.

Increasingly, education is seen as the most effective way to end the cycle of poverty. Few courts today fail to see the correlation between the amount of money available and the quality of education possible in a district. The real struggle may come over the definition of local control.

---

[25] Lawsuits are pending in Alaska, California, Connecticut, Idaho, Indiana, Massachusetts, Michigan, Minnesota, North Dakota, Oregon and Tennessee. In addition, parents in Kansas have filed a suit to challenge a portion of that state's school finance formula. *See* Newman, *Legal Challenges to Finance Formulas on Court Dockets in at Least 12 States*, Education Week at 14, col. 1 (May 2, 1990); Education Week at 3 (December 12, 1990).

[26] School finance lawsuits are planned or possible in Alabama, Illinois, Missouri, Pennsylvania, Virginia and Wyoming. Education Week at 19 (May 2, 1990).

[27] For more information on the concept of municipal overburden, *see* Brazer and McCarty, *Municipal Overburden: A Fact in School Finance Litigation?*, 13 Journal of Law and Education 457(1989).

Historically, local control has entitled the local district to set spending limits. Only wealthy districts had anything to gain with this definition as the poor districts were hard pressed to meet certification standards with the available funds. Frank Newman, President of the Education Commission of the States, said that wealthy districts will say, "We can do more. Why should our kids be held back? Why should we be denied? That's a big debate. The constitutional question is: can you hold back the wealthy district?" *New York Times*, Monday, March 5, 1990. The result in many of the pending state finance cases could easily turn on this question. Perhaps an assessment of the judicial philosophy of the state's highest court on matters such as the issue of local control will be a good indicator of one's chances of prevailing in a challenge to a financing scheme.

In examining these cases, it is interesting to note how many of the states involved were already trying to remedy inequities, trying to move away from per pupil grants awarded without consideration of other factors. South Carolina's funding plan as described in Richland County did take into consideration the individual wealth of each school district. Fair School Finance, the Oklahoma case, cited a statutory directive to extend state support to all school districts regardless of their wealth in order to encourage local taxation initiatives and local control of the public schools. In Wisconsin,an effort to equalize the resources available to each district by supplementing property tax bases to a certain level was recorded in Kukor. Britt, the 1987 North Carolina case, involved the only system providing flat grants based only on the average number of students in school. Montana's complex system of funding, found unconstitutional in Helena, embodied an effort, however inadequate, to equalize available revenue. Texas had made efforts for many years to reduce disparities through programs such as the Foundation School Program. However, Edgewood v. Kirby found the system unconstitutional. Similar histories of legislative efforts in Kentucky and New Jersey failed to save their financing systems when examined in Rose and Abbott.

To what extent were the courts willing to say that there is a relationship between the dollars spent and the quality of the education in a district? Kentucky, Texas, Montana and New Jersey were clear in finding that the districts with lower per pupil spending had markedly inferior educational programs. Wisconsin was quick to note the disparity but told the plaintiff to get its remedy from the legislature rather than the judiciary. South Carolina does not spend any time in its opinion discussing differences in programs available in its districts, nor does it make mention of any substantial differences in available revenue. Oklahoma is quick to establish that equal expenditure per pupil is not required, that the plaintiffs are not alleging an inadequate education. Therefore, the

opinion goes no further; there is no mention of the specific differences in the programs available in poor and rich districts. North Carolina does not contain facts in its opinion which give the reader a picture of the differences in educational offerings in rich and poor schools, but it clearly states that there is no constitutional requirement that each person be given identical opportunities.

How broadly does the court characterize its role in this contest? In three of the decisions, Kirby, and Rose, and Abbott, the justices are clear in saying that they are not legislators, yet they make sweeping decisions, demanding huge overhauls of the educational systems in Texas, Kentucky, and New Jersey. On the other hand, the court in Oklahoma spends considerable time and effort describing the unfortunate condition of education in its state, but refuses to overturn the system. "This is work for the Legislature" they say.

Which states are willing to allow equality of opportunity and which go further and examine what is available to students? Texas, Kentucky, Montana, and New Jersey require that the state system of education be structured so that reasonable opportunity to take part in a wide variety of programs be available to all, not just those living in property rich areas. Kentucky, Texas, and New Jersey are specific in their requirement that "efficient", or "thorough and efficient" does not just mean an open school door for a certain number of days per year. North Carolina has a narrow reading of educational opportunities, requiring only equal access to a school. South Carolina does not say to what standard of education a student is entitled; it only validates the system as it exists since the finance scheme takes into account the wealth of individual districts. Finally, Oklahoma clearly wishes to guarantee only equality of opportunity with the standard being that set by the State Board of Education.

Which of the states have declared education to be a fundamental right under their state constitution? Britt of North Carolina ... its citizens as having a fundamental right to equal *access* to the public school. The District Court in Montana in discussing Helena had ruled that there was a fundamental right to education. This was *not* ruled upon by the Supreme Court in its 1989 decision. The Supreme Court of Kentucky in Rose explicitly said that a child's right to an adequate education is a fundamental one under the Constitution.

The political climate is right for challenges to the public school systems with tremendous disparities in educational opportunities. Perhaps the era of state-based school reform efforts, and the re-emergence of state courts as a vehicle for law reform is the time to devote resources to correcting the funding imbalances in our state's schools.